Message

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Subject: OCSPP Daily Clips, 15 May 2019

Clips compiled by Maggie Sauerhage

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Lawmakers, 13 Bills Seek Answers to Nonstick Chemical Pollution

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EPA prepared to face PCB lawsuit over Hudson River declaration, administrator says

WLNS
EPA ordering Michigan company to dig out PFAS-contaminated sediment from the Rogue River

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EE News: Monsanto lost again on Roundup. What's next for glyphosate?
https://www.eenews.net/stories/1060332679
Ellen M. Gilmer and Ariana Figueroa, E&E News reporters Greenwire: Tuesday, May 14, 2019
Roundup bottles. Photo credit: Mike Mozart/Flickr
Glyphosate is the active ingredient in the weedkiller Roundup. Mike Mozart/Flickr

A California jury awarded more than $2 billion yesterday to a couple who blamed their cancer diagnoses on a chemical found in Monsanto's popular herbicide Roundup — the latest in a string of legal defeats for the Bayer AG subsidiary.

The verdict from the Alameda County Superior Court comes just months after two other juries awarded millions of dollars to plaintiffs in similar lawsuits that claimed Monsanto knew Roundup's active chemical glyphosate was dangerous but failed to warn customers.

Bayer denies glyphosate causes non-Hodgkin lymphoma or any other cancer and is appealing all three verdicts. But legal experts note that pressure is increasing for the company to settle the more than 13,000 additional cases awaiting trial.

"The significance here is that it's three for three," said Micah Dortch, a Dallas-based attorney for the Potts Law Firm, which represents plaintiffs in hundreds of those lawsuits. "Their stock has already taken a tumbling as a result of this, and the lawsuits are mounting."

Bayer's stock price hit $15.52 this morning, cut nearly in half from $29.85 when it acquired Monsanto last June.

Glyphosate is used by businesses, land managers and everyday consumers to combat weeds. The pesticide is also used on food crops, including genetically modified corn, soybeans, cotton and canola.

National and international agencies have disagreed about its health impacts. EPA for years has maintained the chemical does not pose a risk to human health, though it has proposed some restrictions on how it is sprayed in order to protect non-targeted wildlife (E&E News PM, April 30).

In 2015, the World Health Organization's International Agency for Research on Cancer published a bombshell report linking glyphosate to cancer. EPA responded by reviewing hundreds of studies and concluding again that it is "not likely to be carcinogenic to humans."

In a statement yesterday, Bayer blamed the latest verdict on "cherry-picked findings" from the plaintiffs' lawyers.

"Frankly, I'm a little surprised that [Bayer's] had such trouble getting a jury to believe all the work that's been done," said James Aidala, a chemical industry consultant at Bergeson & Campbell PC.

Pressure to settle
The million- or billion-dollar question is when or whether Bayer will settle the thousands of pending cases.

Paul Rheingold, an expert on mass torts, has studied the number of unfavorable verdicts required to push big companies toward settlements.

"When I analyzed all the outcomes, it's as diverse as it can be," said Rheingold, a plaintiff's attorney at the New York firm Rheingold Giuffra Ruffo & Plotkin LLP. "Sometimes the defendants think very early that they should pay up, that it'll be cheaper and less litigation. They set up a settlement program."

But a company still selling a product alleged to be dangerous could be less inclined to settle, he said: "Sometimes it's years and years of litigation."

So far, Bayer is sticking with the fight. The company noted yesterday that key legal rulings in all three cases that have gone to trial have not yet worked their way through appellate review.

"The company will continue to evaluate and refine its legal strategies as it moves through the next phase of this litigation, which will be marked by a greater focus on post-trial motions and appellate review and trials scheduled in different venues," Bayer said.

In an initial challenge to the first verdict, Bayer's lawyers successfully persuaded a judge to slash the $289 million award to $78.5 million.

"But if juries keep thinking that causation is there and that liability is pretty clear ... they've somehow got to start setting up a settlement program," said Rheingold, whose firm also has Roundup cases pending.

Regulation
Environmental groups and public health advocates say yesterday's verdict underscores the need for state and federal agencies to crack down on the chemical.

"Juries informed by independent science have repeatedly rejected the Monsanto-promoted myth that glyphosate poses no cancer risks," Center for Biological Diversity senior scientist Nathan Donley said in a statement.

Alexis Temkin, a toxicologist with the Environmental Working Group, pointed to studies that have linked cancer in agriculture workers to glyphosate exposure. Despite those studies and the recent verdicts, however, Temkin said she's not optimistic EPA will intervene.

"Unfortunately, EPA is probably going to stand by its analysis that glyphosate does not cause cancer," she said.

Claudia Polsky, who leads the Environmental Law Clinic at the University of California, Berkeley, said the increasing number of verdicts against Monsanto could put added pressure on EPA to restrict the chemical or require disclosure of other pesticide ingredients that mix with glyphosate.

The agency's latest review of the chemical is open for public comment now, "and one would expect advocates of restricting the herbicide to be filling the administrative record with evidence from discovery and testimony in recent tort litigation demonstrating that the chemical is far more harmful than EPA and Bayer/Monsanto have to date maintained," Polsky said in an email.

Aidala, the consultant, said the legal action will, at the very least, push regulators to review their own work.

"As a regulator, what it means is, 'Let's go back and double-check our homework. Let's go triple-check our homework. Are we really, really sure?'" he said, adding later: "EPA will be continually questioned as to why they think it's OK."

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The Wall Street Journal: Roundup of Cancer Evidence
https://www.wsj.com/articles/roundup-of-cancer-evidence-11557876010
By The Editorial Board
May 14, 2019 7:20 p.m. ET

A California jury awarded a stunning $2.055 billion Monday to a couple who claim that Bayer AG's Roundup weed killer caused their cancer. But would the judgment have been different if the judge had allowed the jury to see contradictory evidence?

That's the question Bayer will raise in its appeal thanks to Judge Winifred Smith, who presided over the trial. The Alameda County Superior Court judge denied a request by Bayer's lawyers to inform the jury that the Environmental Protection Agency concluded last month that Roundup's active ingredient, glyphosate, is noncarcinogenic and poses no risk to public health when used as directed.

"What's the relevance?" Judge Smith asked before dismissing Bayer's request. But if glyphosate is safe, then it isn't responsible for the non-Hodgkin lymphoma of Alva and Alberta Pilliod. The verdict follows two other recent cases awarding $158 million against Roundup. Bayer now faces lawsuits from some 13,400 plaintiffs bringing similar claims.

The plaintiff lawyers behind these cases rely heavily on the World Health Organization's International Agency for Research on Cancer (IARC), which claimed glyphosate is "probably carcinogenic." But the EPA's new glyphosate assessment is far more robust than that 2015 analysis. Among other considerations, the EPA's experts looked at 167 epidemiological, animal carcinogenicity, and genotoxicity studies. The agency excluded 39 of those studies over concerns about quality.

The IARC relied on fewer than half as many such studies. It was "limited to data published in openly available scientific literature and as such only considered a subset of the studies that EPA considered," says Alexandra Dunn, the assistant administrator at EPA's Office of Chemical Safety and Pollution Prevention.

The international agency also failed to nix research focused on non-mammalian species like worms or reptiles, which the EPA considered irrelevant in determining human risk. And in 2017 Reuters reported the IARC ignored and omitted evidence that glyphosate was noncarcinogenic.

The IARC has issued cancer risk warnings for more than 1,000 products and activities, including hot beverages, aloe, red meat and working the night shift. An adviser for its glyphosate assessment, Christopher Portier, was accepting pay from Lundy, Lundy, Soileau & South, a firm known for its cancer class-action lawsuits. Mr. Portier now appears as a witness for the plaintiffs in the Roundup litigation.

The EPA's glyphosate judgment is an interim finding and awaits final approval. But it follows similar judgments by regulators from the European Union, Australia, Japan, Canada and other developed countries after comprehensive evaluations. A longitudinal study published in 2017 in the Journal of the National Cancer Institute tracked cancer incidence among nearly 45,000 licensed pesticide applicators who used Roundup. The study found that "in unlagged analyses, glyphosate was not statistically significantly associated with cancer at any site."

The EPA also looked for possible hazards to those who ate crops exposed to glyphosate. The agency made conservative assumptions about the levels of glyphosate residue on the crops and drinking water and concluded there is no risk to human health.

That sure sounds relevant, and perhaps the jury would have agreed. Big business isn't popular these days, but companies don't deserve to be looted based on a biased presentation of scientific evidence.

Appeared in the May 15, 2019, print edition as 'Hiding the Roundup Cancer Evidence.'

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The Detroit News
House lawmakers debate how far to go in regulating toxic PFAS compounds
https://www.detroitnews.com/story/news/politics/2019/05/15/house-pfas-hearing-congress-legislation/3678116002/
Melissa Nann Burke

Washington — House Democrats criticized federal regulators' response to the PFAS crisis as "inadequate" Wednesday, while Republicans cautioned against introducing sweeping mandates to environmental statutes while research on the toxic compounds is incomplete.

The lawmakers convened for a hearing on 13 bills related to contamination by toxic fluorinated chemicals that has affected hundreds of communities in Michigan and other states.

"They'll keep showing up in our drinking water sources if we continue to produce and use thousands of different PFAS chemicals," said Rep. Frank Pallone, D-New Jersey, who chairs the Energy and Commerce Committee.

"We need to stop the effects of pollution at the source — contain the pollution before it spreads further and get it out of our air, soil and drinking water, and we don't have a lot of time."

Illinois Rep. John Shimkus, the ranking Republican on the panel's environment subcommittee, urged Democrats to bring in experts from the Environmental Protection Agency to weigh in on the proposed bills, as no EPA witnesses were part of Wednesday's hearing.

"I'm sympathetic to my colleagues whose communities want urgent action to address PFAS. I also am not a fan of rushing to install broad-based major changes to federal law at a time when high levels of anxiety exceed what we know," Shimkus said.

"This does not mean 'do nothing.' Rather, I believe we should not make shortcuts in the law while EPA is taking steps based on solid scientific data to make regulatory decisions."

He added the federal government already has imminent hazard authority to take immediate action in response to urgent problems.

"This is not a 'no' on these bills or a delay tactic. Just give me a little more time," Shimkus said.

PFAS refers to a class of nearly 5,000 chemicals known as per- and polyfluoroalkyl substances that have been used for decades to make firefighting foam, furniture, paper packaging for food and cookware resistant to water, grease or stains.

The chemicals are linked to health effects including certain cancers and damage to liver and immunity functions, developmental impacts on fetuses, as well as cognitive and behavioral effects in exposed children.

Dr. Jamie DeWitt of the Brody School of Medicine at East Carolina University's Department of Pharmacology & Toxicology told lawmakers these health effects are being seen at levels lower than the federal health advisory level of 70 parts per trillion set in 2016.

She offered some hope, noting that after the voluntary removal of two well-known compounds, PFOA and PFOS, levels decreased in the environment and in human bodies.

"It is not too late," DeWitt said. "But since that time, replacement PFAS have increased in production. We need to learn more about these replacement compounds and ask ourselves, 'Are these essential for the public good?'"

State officials in Michigan have been actively testing for PFAS and detected high levels at 49 sites so far.

A recent report by the Environmental Working Group found Michigan has 192 PFAS sites — the highest in the nation — when including locations such as schools or apartment buildings where testing found levels of PFAS at times well below 70 ppt.

Brian Steglitz, manager of water treatment services for Ann Arbor, asked Congress to require more effective controls on the watershed level to ensure PFAS chemicals are not allowed to enter watersheds. He also wants polluters to be forced to cover the costs of abatement.

Steglitz said Ann Arbor first detected PFAS in its drinking water in 2014 and has invested about $850,000 to replace filters with a new type of granular activated carbon media to improve removal of PFAS compounds from source waters.

"Removing these chemicals at the end of the pipe is not the most cost-effective approach. The best way to address these contaminants is at their source," he said Wednesday.

Steglitz noted Michigan is developing drinking water standards for an unspecified number of PFAS compounds in the absence of enforceable federal standards.

"My understanding is that EPA Region 5 is engaged with this, but Michigan is really taking the leadership," Stegliz said.

"They are moving forward with this because of all the testing and analytical work that's been done in Michigan to identify sources of PFAS contamination — so not waiting for EPA and moving forward on their own because of the demand from residents of Michigan."

Erik D. Olson of the Natural Resources Defense Council urged lawmakers to require comprehensive monitoring of drinking water, as Michigan has done, and to tackle the problem as a class because of the chemicals shared properties.

He supported bills to phase out existing PFAS use and prohibit bringing PFAS alternatives or uses to market. Olson also advocated for legislation requiring a fee for industrial users of PFAS chemicals to pay for water treatment.

Shimkus suggested that if lawmakers "by legislative fiat" ban 4,000 to 5,000 chemical without the due diligence of scientific analysis, Congress risks "litigation ad infinitum and no action on this."

"Yes, I think there would be litigation. There's no question," said attorney Jane Luxton, co-chair of the Environmental and Administrative Law Practice at the firm Lewis Brisbois.

"To just sort of impose blanket bans is highly risky. It risks over-correcting, if you want to put it that way, and changing or diluting the priorities that need to be focused on — the highest risks."

Luxton highlighted bipartisan legislation introduced by Reps. Fred Upton, R-St. Joseph, and Debbie Dingell, D-Dearborn, to designate PFAS chemicals as hazardous substances under the Superfund program within a year.

Luxton noted the EPA has initiated the regulatory process to designate PFOA and PFOS as hazardous substances, and such a formal listing would give the agency additional power to require responsible parties to undertake or pay for cleanup.

"But expanding this approach to all PFAS compounds, as HR 535, the PFAS Action Act of 2019, seeks to do, could lead to wholesale reopening of remediated sites, potentially overwhelming the program and undermining progress on the highest-risk targets," Luxton said.

Other legislation would require EPA to set a "maximum contaminant level" for PFAS compounds to ensure a single national standard to protect the safety of drinking water in all communities under the Safe Drinking Water Act.

But EPA anticipates releasing a proposed standard for PFOA and PFOS this year.

"It makes sense to see EPA's recommendation and decide at that point if further legislation is needed," Luxton said.

Pallone asked a representative of the American Water Works Association if utilities across the country can afford to pay for PFAS treatment costs without additional aid.

"Right now, they will do what they have to do if there is public demand and political leadership demanding that it be treated," said Tracy Mehan, the association's executive director of government affairs.

"But again, there's no question that if you do 5,000 chemicals under a new (maximum contaminant level) or treatment standard, that's going to have unforeseen costs that are going to affect other investments."

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The Saratogian
EPA: GE not off the hook for PCB cleanup work
https://www.saratogian.com/news/local-news/epa-ge-not-off-the-hook-for-pcb-cleanup-work/article_ab522eca-768e-11e9-b944-739e4dc5b7b3.html
By Paul Post

SARATOGA SPRINGS, N.Y. — General Electric Company's Hudson River PCB cleanup work is far from done despite spending $1.7 billion on a six-year dredging project, officials say.
Recently, the U.S. Environmental Protection Agency ruled that the job was carried out as called for under a court order.
But a final "Certification of Completion" won't be issued until the EPA is convinced that dredging has achieved its goal of protecting human health and safety, and the environment, which might take several decades as the river's natural recovery occurs.
"GE is still very much on the hook," EPA Regional Administrator Peter Lopez said Tuesday, during a Citizens Advisory Group meeting at the Gideon Putnam Hotel. "GE's next obligation is to monitor the river and the dredging areas and to see if in fact, the remedy is performing. We need to make sure the fish are getting better and as we do sediment samples that everything they did is leading to a final end state of protectiveness."
"If in fact, we feel the remedy is not protective, we have the opportunity and responsibility to reassess it and then determine what GE's role is in putting us back on track," Lopez said.
Environmental groups such as Scenic Hudson and Riverkeeper have blasted EPA for saying dredging was done correctly, while at the same time acknowledging it hasn't met its goal of protecting human health and the environment.

Previously, the state Department of Environmental Conservation also said dredging didn't go far enough and that some critical pockets of PCBs were left behind.
GE discharged an estimated 1.3 million pounds of polychlorinated biphenyls (PCBs), a suspected carcinogen, into the river from plants in Hudson Falls and Fort Edward over a more than 30-year period ending in 1977.
Dredging removed 2.65 million cubic yards of contaminated sediment from a 40-mile stretch of river, from Fort Edward south to the Troy Dam. The work lasted from 2009 to 2015.
EPA says the main way to determine dredging's effectiveness is testing PCB levels in various species of fish, taken from numerous locations. However, conclusive data might not be known for many years.
Meanwhile, many people are also concerned about the threat of PCBs in the floodplain surrounding the river, and in the Lower Hudson's waters from Troy all the way to New York City.

About 8,000 floodplain samples have already been taken, and property owners are being advised of such results. But it will likely take another five years before a formal decision is made that determines how GE does this cleanup, too, said Gary Klawinski, EPA Hudson River Project manager.
Julia Stokes, of Schuylerville Area Chamber of Commerce, said many local residents' property values are being negatively impacted while waiting for remediation to occur.
"How long is it going to be before you take care of it so we aren't looking at it every year?" she said.
Advisory Group member David Mathis, of Schuylerville, raised concerns about young children wading in the water, in potentially contaminated soil.
"We wait and wait and wait," he said. "It doesn't help our kids. We need to get areas tested and at least put a sign up saying, this area is contaminated or this area is safe."
EPA Deputy Regional Administrator Walter Mugdan said heavily used places such as Fort Hardy Park have been tested and are safe. New samples are taken each time there's a high-water event such as recent spring flooding, to make sure PCBs aren't present, he said.
In addition to testing fish and sediment for PCBs, a variety of other post-dredging activities are also taking place, such as monitoring restored habitat and caps covering hard-to-reach PCBs, which dredging couldn't remove.
"So GE's not going anywhere," Lopez said.
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MLive
Congress told to stop PFAS at pollution source
https://www.mlive.com/news/2019/05/congress-told-to-stop-pfas-at-pollution-source.html
By Paula Gardner

If 2018 was the year of elevating concerns about PFAS contaminating drinking water, then this year already marks a turning point to the conversation.

The chemicals have been found in 43 states and officials have identified where at least 19 million people drink water containing them. Requests to the military for mitigation abound; some cleanups are underway. And many states - including MIchigan - are looking at legislation and new regulation to increase protections for residents.

But the message heading to a Congressional subcommittee on May 15 takes it further: PFAS remains in use in the US, and we know little about many of them, witnesses on May 15 are telling the U.S. House Subcommittee on Energy and Climate Change.

Testimony will come from the head of Ann Arbor's water treatment system and a toxicologist on Michigan's PFAS science panel.

And, they said, increasing scrutiny on the per- and polyfluorinated compounds before they reach drinking water needs to be part of the national agenda.

"The best way to address these contaminants is at their source," said Brian Steglitz, manager of water treatment services for the city of Ann Arbor, in his written statement.

Steglitz makes that statement after PFAS was found in the city's drinking water in 2014, as officials learned from the Environmental Protection Agency in 2016. By 2018, the city had made at least a $1 million investment in additional filtering for the raw water coming into the city's treatment plant - 85 percent of which comes from the nearby Huron River.

The peak combined total PFAS of PFOA and PFOS reached 43 parts per trillion, a level below the EPA's recommended health advisory and a number giving some comfort to officials and residents. But as the PFAS contamination concerns escalated in Michigan, the city focused on reduction and urged the state to find the source.

That source turned out to be an industrial facility several miles upstream. Tribar Manufacturing had used the chemicals years ago in its metal plating, and they were found discharging into the river from a municipal wastewater plant. By fall 2018, 1,000 miles of the Huron River watershed had been affected and PFOS levels continue to be higher that the state limit of 11-ppt. The company, meanwhile, added filtration on its end to limit new contamination.

MLive investigation shows high levels of toxic chemicals are flowing through wastewater treatment plants, violating state law while threatening the environment and public health.

The situation speaks to what the federal government can do to prevent chemicals from reaching drinking water supplies, Steglitz says.

"While we have come up with a solution to ensure the city's drinking water is safe and public health is protected, removing these chemicals at the end of the pipe is not the most cost effective approach," he said.

He continued: "The EPA (under the Toxic Substances Control Act of 1976) to require comprehensive risk assessment for new chemicals before they are introduced into circulation.

"For those chemicals that are already in circulation and being actively used by industry, more effective controls are needed to ensure these chemicals are not allowed to enter our watersheds, as well as legislation that would require the polluter to cover the costs of abatement."

The problem is acute at the nation's water utilities, he said.

The hearing was entitled, "Protecting Americans at Risk of PFAS Contamination & Exposure." Other speakers also encouraged a wider look at the chemicals, while pointing to the number of PFAS compounds in use - an estimated 5,000, according to Dr. Jamie DeWitt, associate professor of pharmacology and toxicology at East Carolina University. She said that the nation needs to consider the impact from them as a class of chemicals, not by individual chemical makeup.

Researchers know the chemicals are widespread, persistent, toxic at low doses and highly mobile - notably in water.

But what researchers don't know about many PFAS is troubling, DeWitt added.

"The US EPA has not set a legally binding regulatory limit for any chemical in two decades," said DeWitt. "... Of the 5,000 known PFAS, the vast majority have no associated research data or standards for human biomonitoring.

"It is not feasible from a time or resource perspective to test our way out of this crisis," she added.

Michigan residents may be in line to pay for the fixes to PFAS contamination for years to come.

Meanwhile, as production of PFOA and PFOS has been reduced, chemical companies put replacements on the market with little public information or health data available.

"We need to learn more about these replacement compounds," DeWitt said.

Adverse health effects from PFOA and PFOS are documented, speakers said. That warrants immediate action, said Eric D. Olson of the Natural Resources Defense Council.

He called from immediate action, including:

- Stop approving new PFAS and new uses of existing PFAS.
- Phaseout manufacture of existing PFAS and products using them, such as firefighting foams, food contact substances, clothing, cookware.
- List all PFAS as hazardous substances under for Superfund and military cleanup purposes.
- Require PFAS polluters to pay for cleanup and water treatment.

"Congress must step in to address the many problems that PFAS are causing, to force clean up the contamination and require polluters to pay for the crisis they have created," Olson said.

Thirteen bills are pending in the US House, prompting the May 15 hearing. Those would strengthen the nation's approach to PFAS and bring some uniformity to the response while other measures are enacted on a state-by-state basis, proponents said. Cautions also have been raised, including by attorney Jane C. Luxton in her subcommittee testimony.

"Perhaps the most effective focus for Congressional support at this point is providing additional funding for research and regulatory efforts that target priority concerns," she said.

But existing tools also can be used toward the goals of trimming exposure, said G. Tracy Mehan, executive director of government affairs for the American Water Works Association.

"TSCA has data-gathering authority that the agency could use to garner more information from the manufacturing sector about the number of PFAS compounds that have been developed, in what quantities they were produced and where they were produced," Mehan said.

"Deploying TSCA authorities in the service of safe drinking water is 'source water protection' at the strategic level."

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Bloomberg Environment
Congress Can't Wait for EPA on Nonstick Chemicals, Tonko Says
https://news.bloombergenvironment.com/environment-and-energy/congress-cant-wait-for-epa-on-nonstick-chemicals-tonko-says
By Pat Rizzuto

Congress must act now to require the EPA to use a range of regulations to cleanup and regulate a large group of chemicals contaminating water systems across the U.S., Rep. Paul Tonko (D-N.Y.) said during a May 15 hearing.

"We cannot wait for EPA to act," said Tonko, chairman of the subcommittee on environment under the House Energy and Commerce Committee.

The hearing discussed a large group of chemicals called per- and polyfluoroalkyl substances (PFAS), which are used to make textiles, paper, food packaging materials, firefighting foam, and cookware with heat, oil, and water resistant properties.

But the chemicals' persistence in the environment, and the toxicity of at least two of the group, have spurred multimillion dollar toxic tort litigation across the country involving companies such as 3M Co., the Chemours Co., and DowDupont, which make or formerly made some of these chemicals.

The Safe Drinking Water Act needs to be updated, but that "cannot stop us from taking action on PFAS," Tonko said. "PFAS issues are bigger than drinking water."

But Republicans say existing laws are enough to address the issue.

Congress overhauled the nation's chemicals law in 2016 and its risk-based regulatory approach should be used to decide whether some PFAS chemicals need to be regulated, said Rep. John Shimkus (R-Ill.) the top Republican on the subcommittee.

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Politico Pro
PFAS push opens debate on sweeping approach to chemical regulation
https://subscriber.politicopro.com/article/2019/05/pfas-push-opens-debate-on-sweeping-approach-to-chemical-regulation-1440026
BY ANNIE SNIDER

EPA has not regulated a new drinking water contaminant in more than two decades; now lawmakers are pushing for the agency to tackle roughly 5,000 all at once.

As Congress prepares to take up a suite of bills grappling with the challenges that PFAS chemicals pose in the air, water and manufacturing, one of the major fault lines will be whether to require that they be regulated individually or as a class. Known as "forever chemicals," PFAS all share a strong carbon-fluorine bond that makes them linger in soil and groundwater and causes them to build up in the human body. Some varieties have been linked with kidney and testicular cancers, immune problems and other ailments; thousands of others have very little if any research into their health effects.

Public health advocates and activists from communities with contamination from the toxic chemicals argue there is simply no way to effectively grapple with the problem without tackling the entire family of chemicals all at once.

"If you regulate them one by one, we're going to end up never having regulated these chemicals," said Erik Olson, who heads the Natural Resources Defense Council's health program.

If regulators tackled each PFAS variety individually, he argued, industry could simply tweak the chemical formula, producing a slightly different variations that pose similar health and environmental problems but aren't restricted.

"It would be a complete toxic treadmill to be running on," he said.

This argument has driven lawmakers from both parties to introduce bills in both the House and the Senate that would direct EPA to take the class approach for setting a drinking water standard (H.R. 2377 (116)), Clean Air Act regulation (H.R. 2605 (116)) and a Superfund designation (S. 638 (116)), as well as disclosure requirements under public right-to-know laws (H.R. 2577 (116)). Others would take steps to restrict their use in commerce as a class (H.R. 2600 (116)).

But industry has staunchly opposed this approach, arguing that there are significant variations among the more than 5,000 chemicals in the PFAS class, including in their health risks and in their uses.

"One-size-fits-all regulation of chemicals as a class is an approach that has been disfavored — if not outright rejected — repeatedly by U.S. agencies and other international regulatory bodies over the years. Consequences can range from deterring innovation to discouraging alternative product design. It can also go as far as completely

eliminating a chemistry necessary to an essential product or enabling technology," said a spokesperson for the FluoroCouncil, a division of the American Chemistry Council that represents companies that manufacture, formulate or process PFAS.

And while many of the bills have drawn bipartisan backing — with key Republicans like Sen. Shelley Moore Capito (R-W.Va.) and Rep. Fred Upton (R-Mich.) facing crisis in their home states serving as co-sponsors — some Republicans are echoing the industry's concerns with treating the chemicals as a class.

"Moving a bill to the floor without going through the real due diligence, the science, I think is going to be easy to do for the Democrats and it will be easy for a few of my colleagues to support it," said Rep. John Shimkus of Illinois, the top Republican on the House Energy and Commerce Committee's environment and climate change subpanel, which holds a legislative hearing on many of the bills this morning.

"The question is: Then what? Is that really something that really gets picked up? An emotional bill based upon fear versus real science?" he asked.

The degree of scientific information on environmental and health dangers of specific PFAS varies widely.

Compounds like PFOA and PFOS, which were used for decades in firefighting foam and consumer products like Teflon and stain-resistant carpeting, have received significant attention from researchers, but other PFAS have gotten little if any independent scrutiny. In some cases, even their chemical formulations are considered trade secrets, making it virtually impossible for independent researchers to test for them in the environment and human bodies, let alone assess their health risks.

Industry has generally acknowledged that "long-chain" PFAS like PFOA and PFOS, which are no longer in use in the U.S., can pose health hazards, but has argued that the "short-chain" PFAS that they have been replaced with don't pose the same challenges.

But Jamie DeWitt, a toxicology professor at East Carolina University, said that researchers are finding that, while the short-chain compounds might not stay in people's bodies for as long as their longer-chain counterparts, they are associated with similar illnesses.

"What we see from the compounds that we've classified as short-chain, when we give them to experimental animals you often see the same suite of health effects as you see when you give them the long chain," she said.

Moreover, she noted that many people are exposed to a mélange of different PFAS, since the chemical reactions that produce commercially useful PFAS produce byproducts as well, and when the commercial products break down in the environment they can create subcomponents that are also PFAS. How the combination of chemicals interact to affect human health remains an open question.

"One of the things we're struggling with is PFAS don't occur one at a time when people are exposed, people are exposed to a whole mixture of compounds," she said. "They're not separable in the environment and because we can't separate them in the environment, why should we have to separate them from a public health perspective?"

But it's not clear that the country's environmental laws will be conducive to such an approach.

The 1996 amendments to the Safe Drinking Water Act set rigorous new scientific standards and cost-benefit requirements in order for EPA to set legally enforceable drinking water limits.

While some families of chemicals have been regulated as a group under the drinking water law, including PCBs and dioxins, those regulations were set before the 1996 amendments were in place, and with some direction from Congress. Since the latest amendments came into effect, EPA has not regulated a single new contaminant under the

drinking water law. It has only attempted to do so for perchlorate, which it decided in 2009 warranted regulation, but 10 years later the agency has yet to propose a drinking water limit for it.

Industry has emphasized that any PFAS regulations must be set using "best available science" — a term that environmentalists say can be used to delay indefinitely since science continuously evolves.

"We encourage EPA to move transparently, deliberately, and expeditiously to establish regulatory standards for PFAS compounds using the best available science and the best practices in environmental policy development," the Responsible Science Policy Coalition, made up of companies with PFAS liability like 3M and firefighting foam manufacturers, said in a statement in February when EPA released its PFAS Action Plan.

Even those who want PFAS regulated question whether EPA can issue a standard that will hold up in court, especially if the agency tackles the chemicals as a class.

"It's difficult to regulate anything under the law, unfortunately," said Olson with NRDC. "Is it harder to regulate as a class than it is to regulate one chemical? Yeah, I think it is."

But politics may intervene first. Already, players in the Senate are acknowledging that a class-based approach might not be doable.

"If you look at the length of time that this supposedly stays in the water systems I think you've got to look at the whole class, but I don't know if that can ultimately get through," said Capito, who co-sponsored the bill that designate all PFAS as hazardous for the purposes of Superfund and has pressed EPA to set a strong drinking water standard for the chemicals.

Anthony Adragna contributed to this report.
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CNN
Majority of sunscreens tested would flunk proposed FDA safety tests, report says
https://edition.cnn.com/2019/05/15/health/sunscreen-fda-safety-standards-study/index.html
By Sandee LaMotte, CNN

(CNN)Nearly two-thirds of all sunscreens evaluated by the Environmental Working Group would not pass safety tests proposed by the US Food and Drug Administration, the consumer advocacy group announced Wednesday.

The group released its analysis as part of its 2019 Guide to Sunscreens, a yearly report on sunscreen safety that the nonprofit began in 2006.

The group said it analyzed the ingredients and performance of more than 1,300 products with sun protection factor, or SPF; 750 of those are marketed as beach and sport sunscreens. The analysis involves only a fraction of the sunscreen products sold in the United States today, which the FDA estimates to number over 12,000.

The report said that over 60% of the products tested did not offer adequate sun protection or contained potentially harmful chemicals.

The Environmental Working Group has reported similar results in the past. What makes this year's report different, said Director of Healthy Living Science Nneka Leiba, is that the 2019 products were judged using FDA safety guidelines proposed in February.

"Even though we've come up with similar results in our guide before, comparing it to the FDA's actual proposed standards is really strong," Leiba said. "So the fact that 60% of the market seemingly wouldn't be considered safe and effective by the FDA is a huge deal."

The big deal of skin cancer

Skin cancer strikes more Americans each year than all other cancers combined. Melanoma, the most deadly form, accounts for only 1% of all skin cancers, but most of the deaths, according to the American Cancer Society. Its statistics show that the rates of melanoma have been steadily rising over the past 30 years; worldwide, melanoma is the 19th most diagnosed cancer.

While many people today turn to sunscreens as their first choice for sun protection, it wasn't until recently that sunscreen ingredients were regulated by the FDA, said Dr. Len Lichtenfeld, acting medical director of the American Cancer Society.

"We couldn't even be certain what was in the product until the FDA came out with some rules that define how to test sunscreens and how to label them," he said.

The need for additional testing

In February, the FDA called for additional testing of a dozen common sunscreen ingredients after finding that high levels of four of them -- avobenzone, oxybenzone, ecamsule and octocrylene -- can enter a person's bloodstream after just one day of use. The chemicals remained in the body for at least 24 hours after the last sunscreen application.

The most-studied chemical in sunscreens, oxybenzone, has been linked to damage to coral reefs and marine life, as well as lower testosterone levels in adolescent boys, hormone changes in men, and shorter pregnancies and disrupted birth weights in babies. Researchers, however, caution about assuming a direct cause-and-effect relationship without further studies.

The Environmental Working Group found that two-thirds of the sunscreens in its 2019 report contain oxybenzone, often with varying mixtures of the other common chemicals.

The FDA study did not show that oxybenzone and the other ingredients can cause health issues, experts stress, only that the chemicals could be absorbed. The FDA, the American Cancer Society and the Environmental Working Group, among others, recommend that consumers continue to use sunscreen appropriately.

If concerned, experts suggest that consumers look for products with zinc oxide and titanium dioxide, which studies show are not absorbed into the skin.

In a statement in February, the national trade council for sunscreen, cosmetic and personal care products said the findings might confuse consumers and discourage the use of sunscreen. "The presence of sunscreens in plasma after maximal use does not necessarily lead to safety issues," said Alex Kowcz, chief scientist for the Personal Care Products Council.

The problem with 100+ SPF coverage

In the proposed rules, which are in the public comment phase, the FDA also calls for a cap on SPF levels on sunscreen products. SPF applies only to the UVB rays of the sun, which burn the skin. Sunburns are a leading cause of melanoma.

The FDA says there is no good data showing that sunscreens can protect past a level of 60+ SPF, and therefore labeling sunscreen at levels higher than 60+ could be misleading by providing a false sense of sun protection.

The Environmental Working Group's new report said that more than 10% of the 1,300 products it tested were labeled as SPF 50 or higher.

Sunscreens often boost SPF to 100+ and higher, the report says, but often fail to adequately protect against equally dangerous UVA rays, which age and damage the DNA in skin cells, contributing to skin cancer.

"Using a sunscreen with poor UVA protection on a vacation is similar to taking a trip or two to a tanning salon," said David Andrews, senior scientist with the group.

Only sunscreens labeled as broad-spectrum protect against both types of ultraviolet light. The FDA's proposed guidelines say sunscreens with an SPF of 15 or higher must be broad-spectrum, offering protection against UVA rays.

In addition, the FDA wants the extra UVA protection to rise along with UVB protection. So as a product moves toward SPF 60+, so too grows the level of UVA protection.

Based on its modeling, the Environmental Working Group says that 25% of all sunscreen products it tested on the market today would fail the new FDA standards for UVA protection.

Concerns about spray sunscreens
The possible danger posed by spray and powder forms of sunscreen application is another area of FDA concern. Sprays are potentially combustible, and both sprays and powders can enter the lungs if particles are small enough.

Environmental Protection Agency studies of particle pollution, the fine film of water and dust/chemical/soot/acid particles that hangs in the air, show that anything 10 micrometers in diameter or less poses the greatest health problems because they can enter the lungs.

"Once inhaled, these particles can affect the lungs and heart and cause serious health effects in individuals at greatest risk, such as people with heart or lung disease, people with diabetes, older adults and children (up to 18 years of age)," the EPA says.

Based on data from studies and input from the Personal Care Products Council and several other manufacturers, the FDA is planning on placing sprays under the "generally accepted as safe" or GRASE category, as long as they are tested to be sure that particles are too large to be inhaled. Powders, however, require additional testing to be placed into that category, the FDA says.

The 2019 Environmental Working Group report shows that spray sunscreens are on the rise, with more than a fourth of the products in the guide available in spray form. Due to the lack of definitive testing, the group recommends that all sprays be avoided.

The standards set in the proposed FDA guidelines could easily be changed by lobbying efforts and additional data, Leiba said. But the group, which has been petitioning the FDA for increased scrutiny for years, is heartened that many of their safety suggestions are being evaluated.

In the meantime, consumers should continue to protect their skin from the sun and choose sunscreens with the lowest risk, she said.

"It's been a while since I've seen the FDA really showing their concern about sunscreen," Leiba said. "If the FDA's doing that, it really means that consumers need to take heed."
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Bloomberg Environment
Lawmakers, 13 Bills Seek Answers to Nonstick Chemical Pollution
https://news.bloombergenvironment.com/environment-and-energy/lawmakers-13-bills-seek-answers-to-nonstick-chemical-pollution
By Tiffany Stecker and Pat Rizzuto

Lawmakers have been laying the groundwork for months to come up with solutions to a growing headache for water providers in all corners of the U.S.

House members are meeting today to discuss a strategy for moving through Congress over a dozen bills on pollution from poly- and perfluoroalkyl substances (PFAS)—chemicals linked to thyroid and liver problems, cancer, and immune system deficiencies.

The problem is enormous.

Since 1949, manufacturers have used thousands of different PFAS chemicals in everything from fast-food wrappers to nonstick pans to fire-extinguishing foam. The chemically stable compounds resist heat and accumulate easily in humans and animals.

Over 99% of Americans have PFAS in their blood, according to the Environmental Protection Agency. And water utilities are spending millions to reduce the amount of the compounds in their drinking water sources.

"Every bit of delay is threatening to the public health and well-being of the American people," said Rep. Paul Tonko (D-N.Y.), who as chairman of the House Energy and Commerce subcommittee on environment and climate change is presiding over the May 15 hearing.

Some lawmakers are working to learn more about the particular issues with PFAS in each other's districts.

Tonko and Rep. Dan Kildee (D-Mich.) visited Pennsylvania districts last week served by Reps. Madeleine Dean (D) and Brian Fitzpatrick (R), where the fluorinated chemicals from the firefighting foam used at former military installations seeped into the groundwater. Fitzpatrick said he is planning to go to Kildee's Flint-area district as well.

Top Environmental Priority

Some see the legislation being attached to a must-pass appropriations bill or Department of Defense authorization bill. The last two National Defense Authorization Acts provided funding for a nationwide study on the health effects of PFAS. The Pentagon could be on the hook for millions of dollars in cleanup costs because of the widespread use of PFAS-containing foam at bases across the country.

"Every single avenue that is a possibility, we're going to pursue every single one of them," Fitzpatrick, who is co-chairing the bipartisan Congressional PFAS Task Force with Kildee, told Bloomberg Environment. "It's my top environmental priority right now."

Others, like Rep. Debbie Dingell (D-Mich.), envision a larger, PFAS-related package that will pass the House. Dingell says she has the backing of the top members of the House to pass something on PFAS.

The 13 bills up for consideration at this time fall in three areas, said Scott Faber, senior vice president of government affairs for the Environmental Working Group. Some, like a measure from Rep. Antonio Delgado (D-N.Y.) to add the chemicals to the Toxics Release Inventory, address the need to monitor PFAS in the environment and in humans.

Others seek to ban the chemicals altogether.

A third group of bills tackles the cleanup.

And the House fiscal year 2020 spending bill would set aside $18 million for studying PFAS, more than double current spending levels.

The situation reminds Faber of the concerns over polychlorinated biphenyls (PCBs), another persistent and ubiquitous pollutant linked to cancer and reproductive effects.

"We know we have a contamination crisis," Faber said. "We just don't know how big it is."

PFAS Action Plan

On the Senate side, Democratic Sens. Debbie Stabenow (Mich.) and Jeanne Shaheen (N.H.) proposed several bills each to address the problem.

Sen. Tom Udall (D-N.M.) introduced legislation (S. 675) that would authorize the Pentagon to offer PFAS-free water to agricultural operations near military bases where contaminated groundwater has been found. A spokeswoman for Udall said the office has not ruled out attaching the bill to a larger package.

Udall, a member of the Senate Appropriations Committee, also wants to increase funding for cleaning up PFAS in the Pentagon's spending bill, the spokeswoman said.

The EPA released a PFAS action plan in February, in which it said it was developing a drinking water standard called a maximum contaminant level for two of the most prevalent PFAS chemicals—PFOA and PFOS, two molecules with long chains of fluorine and carbon atoms that have been studied for years. The agency also said it would work toward designating those chemicals as hazardous substances under the Superfund law.

One of the bills, H.R. 2377, would go further than the EPA and establish a limit for all PFAS chemicals. Another, H.R. 535 (S. 638 in the Senate), would extend the hazardous substance designation to all PFAS.

Short-Chain PFAS
Short-chain PFAS chemicals, those with less than eight carbon atoms, are generally less toxic and less bioaccumulative in wildlife and humans, according to the EPA. But only scant research exists on the short-chain chemicals, which chemical manufacturers began to sell as replacements for PFOA and PFOS.

Legislators may also be evaluating whether it would be better to set a maximum contaminant level or develop a technology standard to limit these contaminants, said Betsy Southerland, who oversaw science and technology issues in the EPA's Office of Water before retiring.

Requiring the EPA to identify technologies that could remove both the older and newer long-chain and newer short-chain PFAS could be a more effective way to control PFAS then requiring the agency to set a drinking water standard for each one, said Southerland and Carl Reeverts, former deputy director in EPA's Drinking Water Protection Division.

At the very least, the members expect to bring more attention to the problem.

"A year or so ago most people had no idea what PFAS was," Rep. Fred Upton (R-Mich.) said.
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The Daily Gazette
EPA prepared to face PCB lawsuit over Hudson River declaration, administrator says
https://dailygazette.com/article/2019/05/14/epa-prepared-to-face-pcb-lawsuit-lopez-says
Stephen Williams

SARATOGA SPRINGS -- The U.S. Environmental Protection Agency is prepared to defend its decision to declare a critical part of the Hudson River PCB cleanup done, EPA Regional Administrator Pete Lopez said Tuesday.

"I understand there's some contemplation of a lawsuit, and that's OK; we expected there would be challenges," Lopez said at a meeting of the Hudson River PCB Superfund Site Community Advisory Group.

Lopez made his statements as New York state is believed to be close to following through on announced plans to sue the federal agency over its decision, announced April 11, to declare that General Electric's $1.7 billion dredging project is "complete."

The same day, Gov. Andrew Cuomo and state Attorney General Letitia James announced that the state will sue the EPA, but the state has yet to follow through. Representatives of the Attorney General's Office were at Tuesday's meeting, but did not participate in the discussion.

The state contends that the river isn't yet sufficiently cleaned of the toxic PCBs -- polychlorinated biphenyls -- discharged by GE capacitor plants in Hudson Falls and Fort Edward between 1946 and 1977, when the substance was banned.

"The Hudson River is the lifeblood of communities from New York City to the Adirondacks but we know PCB levels remain unacceptably high in the riverbed and in fish," Cuomo said at the time. "Since the EPA has failed to hold GE accountable for fulfilling its obligation to restore the river, New York state will take any action necessary to protect our waterways and that includes suing the EPA to demand a full and complete remediation."

Tuesday's advisory group meeting at the Gideon Putnam Hotel and Conference Center was its first since the EPA's decision was announced, and Lopez again tried to explain that a final decision that GE is "off the hook" is probably decades away.

Last month's announcement was simply acknowledgement that GE has lived up to the 2002 record of decision in which the EPA ordered dredging to remove PCB concentrations from a 40-mile stretch of the river between Hudson Falls and Troy, Lopez said.

GE contractors removed 2.75 million cubic yards of sediment from the river during dredging that lasted from 2009 to 2015. Of the 1.3 million pounds of PCBs released by GE, the EPA said, dredging recovered 310,000 pounds. Much of the rest likely washed out into the Atlantic Ocean, an EPA official said last month.

"I reviewed this with our attorney, with the state attorney general and [the state Department of Environmental Conservation]. We were compelled to issue the certificate, but GE is not off the hook," Lopez said. "We have the ability to re-open, and we reserve the right and ability ... to have that conversation."

The EPA meanwhile continues to test fish and sediment samples drawn from both the upper and lower sections of the river, said Gary Klawinski, the EPA's project manager.

A separate but related project is taking samples from properties in the river's floodplain to determine whether there is contamination. More than 60 property owners have been sent letters because part of their properties contain PCBs, Klawinski said.

While temporary measures have been taken to seal PCBs on some of those properties, permanent solutions are years away. "We have several more years ahead of us of remedial investigation and then a record of decision will be developed," Klawinski said.

In Schuylerville, local officials are hoping to have more extensive testing of the historic Champlain Canal, a 19th-century navigation channel that is connected to the river. A bike trail is under construction along part of it as part of the statewide Empire State Trail plan, but tourism promoters want to be sure the canal is safe before promoting historic tourism there.

"We're looking for enough information to implement an effective site-specific remediation," said Peter Goutos, an environmental engineer who represents the Saratoga County Chamber of Commerce on the advisory group.

"Where PCBs get in the way of projects potentially moving forward, we are going to address that," Klawinski responded.

Officials with DEC and the state Health Department also re-emphasized that people should not eat fish from the Hudson because of the contamination. Some reports have said it's safe to eat striped bass caught in the lower level, but officials at Tuesday's meeting discouraged that.

"For virtually every fish for every location on the Hudson River, eat none of it," said Kevin Farrar, a DEC remediation scientist.

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WLNS

EPA ordering Michigan company to dig out PFAS-contaminated sediment from the Rogue River

https://www.wlns.com/news/michigan/epa-ordering-michigan-company-to-dig-out-pfas-contaminated-sediment-from-the-rogue-river/2001649762

By: Ronnie Das

ROCKFORD, Mich (WLNS) - The Environmental Protection Agency is ordering Wolverine World Wide to dig PFAS-contaminated sediment from the Rogue River, according to our partners at mLIVE.

The Western Michigan Company must also excavate soil along the White Pine Trail in Rockford, where the shoemaker formerly operated a century-old leather tannery.

Addtionally, the EPA says Wolverine must start putting signs and kiosks near river access points to warn people about hazardous chemicals like chromium, mercury and PFAS in the area.

"There may be exposure risks that can't necessarily wait for an overall plan to address the entire site," said Jeff Kimble, a Region 5 EPA on-scene coordinator who is supervising Wolverine's former tannery and dump site investigations in Kent County.

Existing handwashing stations and signs placed last year are inadequate, Kimble said. The signs face away from the trail and tell people to "wash hands" when exiting the river with no explanation.

Thad Beard, Rockford city manager, said that, while enhanced signage isn't necessarily a great image for the city, it's an important part of public communication.

"The reality is that we're dealing with an environmental cleanup here and it's important that is known to the public," Beard said.

In Rockford, toxic substances like mercury, chromium and lead are confirmed at high levels in the groundwater and in sediment near spots where people regularly launch canoes and kayaks alongside a heavily-used White Pine Trail stretch.

The EPA-ordered work is happening parallel to Wolverine's plan to stem the flow of groundwater contaminated with PFAS into the river, where the so-called "forever chemicals" are causing surface water foam to gather at the Rockford dam.

Beard said concern about the river foam has spiked recently following the state health department's warning to avoid touching it.
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Agri-Pulse
EPA to expedite chlorpyrifos registration review
https://www.agri-pulse.com/articles/12197-epa-to-expedite-chlorpyrifos-registration-review
By Spencer Chase

The Environmental Protection Agency has until 2022 to reevaluate the registration for chlorpyrifos, but the leader of the agency's Office of Chemical Safety and Pollution Prevention doesn't expect it to take that long.

Speaking Tuesday to members of the National Association of Farm Broadcasting, OCSPP Assistant Administrator Alexandra Dunn (pictured above) said the EPA will expedite the review of chlorpyrifos and hopes to complete their work prior to the 2022 deadline because "we recognize that certainty around the future of chlorpyrifos as well as the other organophosphates is very important to the growers."

The agency is also working to comply with a court order to address concerns stemming from a denied 2007 petition from the Pesticide Action Network North America and the Natural Resources Defense Council. The 9th Circuit Court of Appeals has ordered the EPA to respond to objections to that denial by July, but Dunn said "the action you see us take July will probably not completely resolve the agency's standing on chlorpyrifos at this time."

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Cheers, R.

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